

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MARYLAND

3

4 WYNDHOLME VILLAGE, LLC, et al :

5 Plaintiffs/Counterdefendants :

6 Vs. : CIVIL ACTION NO.

7 NADIF OF WYNDHOLME, LLC, et al: L01-3809

8 Defendants/Counterplaintiffs :

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11 Deposition of STEPHEN GARCHIK, taken on

12 Thursday, April 3, 2003, at 10:42 a.m., at the

13 law offices of Schulman & Kaufman, LLC, 100 N.

14 Charles Street, Suite 600, Baltimore, Maryland,

15 before Bonnie L. Russo, Notary Public.

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20 Reported by:

21 Bonnie L. Russo

1 correspondence relative to that then that would

2 be the only way I could tell what the date was.

3 Q. Do you have any information why Palm

4 Realty Ventures, LLC is a party to the Brickell

5 Avenue venture? I am referring to Exhibit 4,

6 page N 0004.

7 A. My recollection of the Brickell Avenue

8 transaction was that unlike NADIF of Wyndholme

9 where only designees of Rusty and Jack were to be

10 members of the LLC, that Brickell included

11 designees of Rusty, Jack and Neil. Now, I have

12 no way to know if that's the entity that he chose

13 or not, but my understanding as a person who is

14 doing work on behalf of Gotham Partners was that

15 the nonGotham ownership would include designees

16 of Jack, Rusty, Neil, and, of course, Paul

17 Slayton.

18 Q. And the one, the agreement for Wyndholme

19 Village, would only include the designees of

20 Zukerman and Quinn; is that right?

21 A. That's my understanding.

1 Q. Do you know why it was that Fisher had  
2 no designee for that project?

3 A. I have no idea.

4 Q. What is your understanding of what this  
5 agreement is?

6 A. It appears to be an agreement that  
7 documents two potential outcomes from the sale or  
8 liquidation of the assets of the Wyndholme --  
9 NADIF of Wyndholme, LLC investment and the 1060  
10 Brickell partners investment.

11 Q. And what does it provide in that regard?

12 A. It provides that generally in the event  
13 that one sells before the other and produces what  
14 is defined here as a surplus sale, which means  
15 that the proceeds from the sale or liquidation of  
16 one exceeds all the liability of the entities,  
17 the future entities whose assets are being sold,  
18 so it pays back -- in simple terms it pays back  
19 to Gotham Partners enough money to get their  
20 capital back from both investments. The sale of  
21 one entity would potentially pay back enough to

1 get Gotham Partners their previous and return of  
2 capital from both investments.

3 And then described as 2 A talks about  
4 what will happen to that money, that excess  
5 money, if it is resolved. It is distributed and  
6 the like.

7 Q. Is that why it is referred to as the  
8 cross-collateralization agreement?

9 A. That would make sense. It is  
10 effectively cross-collateralization, the capital  
11 that Gotham has invested in both projects.

12 Q. Do you know whether there is in  
13 existence an agreement for the Brickell Avenue  
14 project that is similar to the first four pages  
15 of Exhibit 5, that is an agreement that sets  
16 forth the basic understanding of the parties with  
17 regard to the Brickell Avenue project separate  
18 and apart from any cross-collateralization  
19 agreement considerations?

20 A. Is there an agreement that looks similar  
21 to this one?